



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/158570

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on July 24, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department (the agency) correctly determined that the Petitioner was overpaid child care benefits.

NOTE: The record was held open until July 31, 2014, to give the Petitioner an opportunity to submit some paystubs. No documentation was received by the designated deadline.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Representative
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. On January 30, 2014, the agency sent the Petitioner a notice advising her that she was eligible for childcare benefits effective January 1, 2014. The notice indicated that the eligibility determination was based upon her employment at [REDACTED] (Exhibit 4)
3. On March 27, 2014, the Petitioner reported that her employment with [REDACTED] ended on February 6, 2014 and that she received her last paycheck on February 14, 2014. (Exhibit 5)
4. On May 6, 2014, the Petitioner submitted an Employer Verification of Earnings Form (EVFE) that indicated the Petitioner began working at [REDACTED] on April 19, 2014 and that she received her first paycheck on April 24, 2014. (Exhibit 7)
5. On May 14, 2014, the agency sent the Petitioner a notice indicating that she was overpaid \$3,039.42 in childcare benefits for the period of February 9, 2014 to March 31, 2014. (Exhibit 8)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 26, 2014. (Exhibit 1)
7. Petitioner's children had Enrollment based authorizations, meaning that the daycare provider was paid for a set number of hours per week, regardless of whether the child actually attend for that set amount of hours. (See Exhibit 9)

DISCUSSION

Regardless of who caused the overpayment, the county agency is legally required to seek recovery of all overpayments of child care benefits. An overpayment occurs when a recipient is not eligible to receive child care benefits or receives more benefits than is entitled to receive. "All overpayments made to a client, whether due to client error, agency error or fraud, **must** be formally established to be repaid by the client." *Child Care Manual* §2.1.5.2; See also §2.1.4.2.

Wis. Stat. § 49.195(3) provides that the department shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3) See also *Wisconsin Shares Child Care Assistance Manual (Child Care Manual)*, §2.1.5.1, which can be viewed on line at <http://www.dhs.wisconsin.gov/em/index.htm>.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving recoupment of an alleged overpayment, the agency is the moving party, seeking to change the status quo. As such, the agency bears the burden to prove that it acted correctly.

A parent/caregiver is eligible for child care services if he/she needs child care to participate in an "approved activity", such as working. *Child Care Manual*, §§ 1.5.0, et al., & 1.4.8.

It is the agency's contention that the Petitioner was not engaged in an approved activity between February 9, 2014, the time her job ended with [REDACTED], and March 31, 2014, when she reported the loss of her employment with [REDACTED]. As such, the Petitioner was overpaid childcare benefits.

The Petitioner does not dispute the fact that she used her childcare benefits during the time in question. However, the Petitioner argued that she was entitled to do so, because she had obtained employment with a place called [REDACTED] at the [REDACTED] Illinois on February 10, 2014 and that she continued to work there until March 27, 2014.

Petitioner's claim is somewhat dubious, given that she reported the job loss with [REDACTED] on March 27, 2014. It seems a bit strange, that she would not have mentioned the employment with [REDACTED] at the [REDACTED] on that same form. It should be noted that Petitioner has provided no documentation to this administrative

law judge to verify her employment with [REDACTED], even though the record was held open for her to do so.

Based upon the foregoing, it is found that the Petitioner was overpaid childcare benefits for the period of February 9, 2014 and March 31, 2014.

The Petitioner indicated that she was not certain that the overpayment calculation was correct. Looking at Exhibit 9, the overpayment calculations are off by over 2%. This may be due to the Petitioner's co-pay, but the record contains no documentation substantiating what Petitioner's co-pay was, nor how it was determined.

For example, according to Exhibit 9 one child was paid for 36 hours of child care, at \$4.61 per hour. This totals \$165.96, but the overpayment being recouped is \$161.47. This is a difference of \$4.49. Another child was in care for 36 hours at \$5.24 per hour. This works out to be \$188.64, but the overpayment being recouped is \$183.49, this is a difference of \$5.15.

The lower recoupment amount might be due to a co-pay that the Petitioner was required to pay out of pocket, but there is no documentation stating what the co-pay was, nor how the co-payment was determined. The record also lacks proof of the hours that were authorized and it lacks documentation establishing the rate of pay for childcare.

Consequently, the agency will have to review the overpayment for accuracy and issue to the Petitioner a new worksheet, explaining the discrepancy between the total cost of childcare and the amount being recouped.

If the Petitioner still disagrees with the overpayment calculation, she will have to file a new appeal.

CONCLUSIONS OF LAW

1. The agency correctly determined that the Petitioner was overpaid childcare benefits for the period of February 9, 2014 to March 31, 2014.
2. The agency has not established that the overpayment was correctly calculated.

THEREFORE, it is

ORDERED

That the agency review the overpayment determination and issue to the Petitioner a new overpayment worksheet, explaining how the agency calculated the overpayment, including any explanation for discrepancies between the total cost of child care and the amount being recouped. The agency shall take all administrative steps necessary to complete these tasks within ten days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

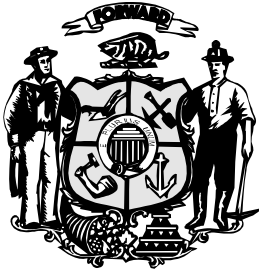
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of October, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 3, 2014.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud